

1 the years that I've spent in this line of work, I've
2 never been told to go after a City sign.

3 Q. Moving on to the next one, see how your copy is.
4 That's not too bad. That would be Exhibit H. "Skip
5 Faust For Sale Coldwell Banker" it looks like?

6 A. That sign would be removed, if not already.

7 Q. That's because of the utility pole you would be
8 relying upon there?

9 A. Yes.

10 Q. I'm going to now move you on to I, ask you the
11 same question about --

12 MR. SPEAKMAN: Can you show him the color
13 picture of that?

14 Q. The North Star?

15 A. North Star Heating and Air. It looks like a pole
16 right there, and that sign would be removed.

17 MR. SPEAKMAN: Wait a minute. Is that the
18 one you just showed him?

19 THE WITNESS: Faust? Skip Faust, yes. That
20 sign would be removed. If I didn't remove it the power
21 company probably would remove it.

22 If that's an intersection that's even more
23 of a problem, because that could be removed for safety
24 reasons for vehicle visibility.



1 BY MR. TUCKER:

2 Q. Now, is there another ordinance in your code that
3 deals with visibility that you rely on?

4 A. Under the code, safety.

5 Q. Is there a specific ordinance that addresses
6 that, separate and apart from the sign code?

7 A. I believe there is.

8 Q. Can you --

9 A. As far as safety, I don't remember from memory,
10 but I believe there is something in the code that says
11 for safety. My job is to enforce the codes, I think it
12 is under the code enforcement -- or the building
13 inspector's realm of responsibilities.

14 Q. We looked at I.

15 A. That sign would be removed. And I'm surprised it
16 is even there because all of the -- most of the
17 contractors know that they are not allowed to put their
18 signs out beyond the property line. That is something
19 that we constantly explain to the contractors, that if
20 they put a sign out beyond the property line, out that
21 far out that we will remove their sign.

22 Q. All right. I'm moving on to J. Can you tell us
23 from looking at that picture if those signs are in
24 violation?



1 A. They are on Lake Gerar. They are on City
2 property. That's Lake Gerar public park. Again, that is
3 Lake Gerar public park. That's something that the City
4 probably installed when they built the playground.

5 Q. So it is not a violation, in your opinion?

6 A. No.

7 Q. Okay. K. Looks like Grenoble, and I don't know
8 if it would be First Street. It looks pretty close to
9 the boardwalk to me.

10 A. Grenoble is on that side.

11 Q. Can you look at that sign, "Village Improvement,"
12 and tell us --

13 A. It looks like it is behind the pole line. There
14 is a pole line that runs back that side of the street.
15 Again, that would be a sign that would be behind the pole
16 line. I don't know the history of that sign, but the
17 sign looks pretty old. It is a possibility it has been
18 there for a long, long time.

19 Q. Is there some exception in the sign ordinance for
20 older signs that you are aware of?

21 A. In my experience, sometimes it is hard to go
22 after old signs.

23 Q. Why is that?

24 A. Normally it is like a grandfathering type of



1 situation. It has been there all these years, before
2 ordinance, sign ordinance was written, or changes were
3 made. And it is like anything, if a code or ordinance is
4 written after something has been installed, that
5 structure or sign is grandfathered as far as its location
6 or placement.

7 I don't know if any kind of -- I don't know
8 if the City made a variance on this or an allowance. I
9 don't know. Again, this sign pre-dates me, so I don't
10 know the status on this sign, how it came about. But it
11 does look like it has got some age to it.

12 Q. Can you, though, point me to a specific provision
13 in your ordinance or in your sign code that exempts signs
14 that are over a certain age?

15 A. No, there isn't.

16 Q. Going on to L, I'll point your attention in
17 particular to the Art League sign. Can you tell from
18 looking at that picture at that sign on the stop sign
19 pole if that is in the public right-of-way?

20 A. It probably is, it is a sign, corner post, it is
21 a directional sign, the Art League. Again, I think that
22 sign pre-dates -- I know that sign pre-dates me because I
23 know the Art League has been where it is at for the last
24 40, 50 years. And it probably was put up there when the



1 Art League was established.

2 Q. Mr. Murphy --

3 A. I don't know. Like I said, I wouldn't be going
4 after that sign. Maybe it is not the right answer, but I
5 didn't even notice the sign until the other day when it
6 was pointed out to me.

7 Q. Well, let's explore that.

8 A. I've driven right by it.

9 Q. Let's explore that a little bit. You said you
10 wouldn't go after that sign. It is a private sign,
11 correct?

12 A. I don't know if it is private or not.

13 Q. Is the Art League a public organization?

14 A. I don't know.

15 Q. Is it a City organization?

16 A. I don't know.

17 MR. SPEAKMAN: I can't answer.

18 A. I don't know. I don't know if it is affiliated
19 with the City or not. I'm not into art, so I don't know.
20 I still don't even know where the place is.

21 Q. All right.

22 A. I don't know. I don't even know where it is.
23 I've probably ridden by it a half dozen times and I don't
24 even know where it is at. I keep hearing all about the



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1 Art League.

2 Q. Mr. Murphy, I have to confess, I've been coming
3 to Rehoboth since I was a child and I don't know where
4 the Art League is either.

5 A. I've probably ridden by it a hundred times. I
6 don't know where it is at. I don't even know where some
7 of these places are.

8 Q. Assuming that is a directional sign for a private
9 organization, in your opinion should that be removed
10 under the sign code, the way the sign code is written?

11 A. The way the sign code is written, if it was a
12 private sign?

13 Q. Yes, sir.

14 A. Probably.

15 Q. All right.

16 A. Again...

17 Q. Do you know approximately how many of those there
18 are in the City?

19 A. No, no.

20 Q. You mentioned just the other day your attention
21 was drawn to these. Who drew your attention to these?

22 A. Oh, I was riding around the other day, I think it
23 was Thursday, I had to go do an inspection, and I believe
24 there is one on the corner of 2nd and Lake Avenue. It is



1 the only reason I saw it is because a gentleman stopped
2 me on the corner to ask me a question, because I was in a
3 City truck, who I know, and I happened to look up where
4 he was standing and I happened to see it up there. So
5 when I saw this, I realized that this is at 2nd and Oak,
6 so there must be more than one of these.

7 Q. I want to point you to the next exhibit in order,
8 M, as in Mary. Same sign?

9 A. Same sign.

10 Q. Again, does that appear to you, based on the
11 picture, to be in the public right-of-way?

12 A. It appears to be.

13 Q. N, as in Nancy, "Tree City U.S.A." sign, does
14 that appear to be in public right-of-way or public park?

15 A. That looks to be in the public park, as we were
16 designated as a tree city.

17 Q. Based on what you have testified to earlier, what
18 is your position on that sign being in compliance or not?

19 A. Well, again, I don't know if it is right or
20 wrong. It looks to be something that the City might have
21 installed. And if the City is justified in saying that
22 it is a City sign, then -- unless I'm instructed to take
23 it down by my superiors...

24 Q. That wouldn't come down unless you were



1 instructed by your superiors?

2 A. That's correct.

3 Q. O, "Oak Grove Trailer Park" sign?

4 A. That's an oldie.

5 Q. Okay.

6 A. Apparently Oak Grove Trailer Park has been here
7 for, I guess forever. I don't know if -- according to
8 this, it is not that far from the edge of the street --

9 Q. Right.

10 A. -- the curb line. But, again, I don't know its
11 location as far as where the property line is. I've seen
12 the sign, but, again, it is a informational sign showing
13 where the small trailer park, Oak Grove Trailer Park is.
14 I've never questioned it. It is just one of those things
15 you ride by and you just sort of know it is there, but it
16 is not on your main purpose to go after.

17 I've probably gone by it a half dozen times
18 going on inspections or going on other things, and just
19 ride right by it sometimes.

20 Q. Are you aware of any exception in the code for
21 private directional signs or identification signs that
22 are private?

23 A. I believe under the sign ordinance there is a
24 section for directional signs, in the sign code, sign



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1 ordinance itself.

2 Q. What about if they are in the public -- I'm
3 sorry, go ahead.

4 A. It doesn't stipulate the right-of-way or private
5 property. But most of the time, if I was to give a
6 permit for this sign, it would have to go on the private
7 property.

8 Q. So if that is in the public right-of-way, that
9 sign, the Oak Grove sign --

10 A. If it is in the right-of-way it would be in
11 violation, that's correct.

12 Q. P, Henlopen Acres.

13 A. Oh, I don't know about this one. I believe
14 that's on Henlopen Acres' property.

15 Q. You do not believe that's the public
16 right-of-way?

17 A. If it is, it is Henlopen Acres.

18 Q. But Henlopen Acres is within the corporate limits
19 of the City?

20 A. No.

21 Q. Do you have any enforcement authority in there?

22 A. No.

23 MR. SPEAKMAN: It is a separate
24 municipality.



1 THE WITNESS: Henlopen Acres is a separate
2 municipality. They are a town of their own.

3 MR. SPEAKMAN: You didn't know that?

4 THE WITNESS: You didn't know that?

5 MR. TUCKER: Let your witness answer,
6 Mr. Speakman.

7 THE WITNESS: But I knew that. I mean, no.
8 When I first came here I did not know it. But I did find
9 out very quickly that Henlopen Acres has their own
10 building inspection agency, their own form of government.
11 So I don't have any jurisdiction on anything that has
12 anything to do with Henlopen Acres, nor would I want to.

13 (Discussion off the record.)

14 BY MR. TUCKER:

15 Q. Mr. Murphy, let me roll back the clock a little
16 bit here and go back to where we started this afternoon.
17 On July 9th, when some of Mr. Sokolove's signs were
18 removed by Mr. Onizuk, did you have any communications
19 with Mr. Onizuk on that date?

20 A. July 9th was a --

21 Q. I believe it was a Saturday?

22 MR. SPEAKMAN: Saturday.

23 A. No.

24 Q. Did you have any communications with Mr. Ferrese



1 on that day?

2 A. Yes.

3 Q. Can you tell us what they were?

4 A. He called me up at home and asked me if we had
5 removed any political signs on -- I believe that was
6 regarding the 7th, July 7th, and I said yes, we had, and
7 he said he had gotten a complaint through the police
8 department, and wanted to make sure that what we were
9 doing. And I told him that we had been removing
10 political signs on public right-of-way. And apparently
11 the mayor, Sam Cooper, had contacted him and he asked me
12 to contact Mr. Cooper, which I, once I hung up from
13 Mr. Ferrese I called Mr. Cooper and explained to him what
14 we were doing. And I advised him if he had any signs
15 that were in public right-of-way, that they would be
16 removed also, any of Mr. Cooper's or any of the other
17 candidates'.

18 Q. Okay.

19 A. And that was the end, basically that was the end
20 of the conversation.

21 Q. Going back to the conversation with Mr. Ferrese,
22 about what time did he call you on Saturday, the 9th, if
23 you recall?

24 A. I think it was around noon.



1 Q. Okay. Did you discuss with him the sign code and
2 the sign policy or --

3 A. Just told him we were removing signs from the
4 right-of-way. On the grass between the sidewalk and the
5 curb or anywhere on the corner where they were around
6 stop signs, and in any of the park areas or the islands,
7 where some of them were found to be.

8 Q. Okay. Did he then ask you to contact Mayor
9 Cooper directly to advise him about these enforcement
10 activities?

11 A. Yes.

12 Q. About how much later after 12:00 o'clock did you
13 contact Mayor Cooper?

14 A. As soon as I hung up from Mr. Ferrese.

15 Q. What did you tell Mayor Cooper?

16 MR. SPEAKMAN: I think he just answered
17 that.

18 A. Yes, what I just said. I mean, I told him that
19 Mr. Ferrese called me and that Mr. Ferrese said that
20 Mr. Cooper wanted to call me -- wanted me to call him to
21 advise him what I was doing and that I told him that we
22 were removing political signs in the park areas, and in
23 the medians, and in the right-of-ways, and between the
24 grass areas, between the sidewalk and curb. And I told



1 him that if he also had any, that they would be removed,
2 the same as the rest of the constituents, or the
3 candidates, I should say. I play no favoritism.

4 Q. What did Mayor Cooper say?

5 A. Well, he said he wanted to make sure that I was
6 playing -- doing it fair. And I said, well, I told him,
7 I said that, again, I will remove his or anybody else's
8 signs that were in those same areas, regardless who they
9 were.

10 Q. Now, we have spent some time today talking about
11 how you use utility poles as a benchmark, if will you.

12 A. Mm-hmm.

13 Q. And how you use sidewalks as a benchmark.

14 A. Yes.

15 Q. Did you have specific discussions with Mr. Cooper
16 about those two markers, if you will, that you rely upon?

17 A. No, no.

18 Q. Okay. As I understand from reading your
19 memorandum, Plaintiffs' 6, subsequent to your
20 conversation with Mayor Cooper --

21 A. Mm-hmm.

22 Q. -- you had to remove three of his signs?

23 A. Yes. Well I removed one that day on the 15th,
24 and two previous.



1 Q. And your conversation with him, though, was on
2 the 9th?

3 A. On the 9th.

4 Q. Do you recall whether or not Mayor Cooper had any
5 signs up for the City on the 9th, which would be the day
6 you were speaking to him, obviously?

7 A. He had a few. He had a few.

8 Q. Now, after speaking to the mayor and Mr. Ferrese
9 on the 9th, did there come a time when either you
10 contacted someone or someone contacted you regarding
11 Mr. Sokolove's sign removal that took place on the 9th?

12 A. Well, basically, it was Mr. Ferrese, when he
13 called me, asked me if I had removed any of
14 Mr. Sokolove's signs, and I said yes, we had.

15 Q. Same day, 7/9?

16 A. 7/9.

17 Q. This is a later call, later in the day?

18 A. Same call. It was about a 15-minute call. I do
19 remember I was getting ready to go out the door, take my
20 grandson to dinner.

21 Q. So at that point, did you know whether or not
22 Mr. Onizuk had removed the signs on the 9th, or whether
23 or not this was some sign removal that happened I think
24 you suggested on the 7th?



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1 A. No, that was in regards to the signs that were
2 removed on the 7th, which was a Thursday.

3 Q. Okay.

4 A. And I knew those signs had been removed. And Mr.
5 Onizuk had told me that; he came and he told me he had
6 removed some signs. And I said, well, as long as they
7 were on City, you know, in the park, and in the island at
8 2nd Street and Olive, were removed, and they were placed
9 in the back of the City truck for my department, and
10 that's where they were stored. Then Saturday morning,
11 Saturday at noon I got the phone call, advising
12 apparently that somebody had seen the signs,
13 Mr. Sokolove's signs, along with various other signs in
14 the back of the City truck, in front of my office. And I
15 guess that was Mr. Joe Hill. And that's when this whole
16 I guess issue started.

17 Q. Okay. How did you get informed about Mr. Hill?
18 How did that come about?

19 A. Well, I didn't know it was Mr. Hill until that
20 Monday, when I received the notice from the police
21 department, the report from the officer that day who
22 handled that. I suppose a theft of political signs.

23 Q. Okay. So on the 9th you have this one
24 conversation with Mr. Ferrese --



1 A. Mm-hmm.

2 Q. -- one conversation with the mayor?

3 A. Yes.

4 Q. Then when is the next time somebody has a
5 discussion with you about any of Mr. Sokolove's signs?

6 A. Monday morning.

7 Q. Monday morning, and that's what you were
8 referring to with the police report?

9 A. That's correct. Apparently that Saturday night,
10 which was the 9th, Mr. Sokolove came over to retrieve his
11 signs, from what I was explained on Monday by Detective
12 Scott O'Bier. And that was approximately, I believe,
13 around 10:30, 11:00 o'clock at night, on Saturday night,
14 and Mr. Sokolove was given back his signs.

15 Apparently they were placed right back in
16 the same area of the Gerar Park, and I guess Mr. Onizuk
17 removed them again from the park and the island at 2nd
18 and Olive. And then Monday morning I guess this whole
19 thing sort of went nuts with these political signs, if
20 you will.

21 Q. Did you get interviewed by a City of Rehoboth
22 police officer in regard to --

23 A. Yes, I did, by Detective Scott O'Bier.

24 Q. Was that on that Monday?



1 A. No, because Detective O'Bier interviewed me on
2 Wednesday. He works -- he doesn't work on Mondays and
3 Tuesdays. It was Wednesday. Wednesday, I don't know
4 what the date is on that Wednesday.

5 Q. But you did receive a call on Monday from the
6 police department?

7 A. Actually it wasn't a phone call. I got a copy of
8 the incident report.

9 Q. How did you get that?

10 A. Through the mail. Inner-City mail. It was left
11 in my mailbox over at City Hall.

12 Q. When did you first see it, on Monday?

13 A. Monday morning.

14 Q. Did you call anybody about that or speak to
15 anybody about that?

16 A. I just spoke to Mr. Onizuk, made sure that that
17 is what happened.

18 Q. Mr. Hunt?

19 A. Onizuk.

20 Q. Onizuk, I'm sorry. You did have a conversation
21 with him on Monday?

22 A. Mm-hmm.

23 Q. As best as you can remember, can you give us an
24 idea of what that conversation was?



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1 A. I just questioned to make sure where he removed
2 the signs from. I wanted to make sure that they were
3 justified in being removed and not on private property.
4 And the problem is that they were on -- in Lake Gerar,
5 and some of the areas were between the sidewalk and curb
6 on Lake Avenue, a couple in other areas of town.

7 Q. So you had a brief conversation with him on
8 Monday, Mr. Onizuk. On Wednesday you get interviewed by
9 Rehoboth Beach P.D., correct?

10 A. Yes, yes.

11 Q. And between that Monday and that Wednesday did
12 you speak to any other City official about the sign
13 issue?

14 A. Mr. Ferrese.

15 Q. When did that take place?

16 A. Monday.

17 Q. Tell me what that conversation was about.

18 A. Apparently, you know, advising what we had done
19 when I went over to City Hall to get my mail, and to make
20 sure that he knew what was going on, because he is my
21 superior. And he basically told me, he says if they are
22 in the right-of-way or on City property that they are to
23 be removed, regardless of who they are, whose signs they
24 are.



1 Q. That was on that Monday?

2 A. That was on a Monday.

3 Q. Any other discussions with him that day,
4 Mr. Ferrese?

5 A. Not about these. Not about the political signs.

6 Q. Now, leading up to the discussion with the police
7 officer on Wednesday, anybody else in the City or City
8 official or City employee you had a discussion with about
9 the sign removal leading up to Wednesday?

10 A. No.

11 Q. And when you were interviewed by Rehoboth P.D.,
12 was that private or were other folks present?

13 A. Private.

14 Q. And that was in City offices?

15 A. It was my office.

16 Q. Following a discussion with Rehoboth Beach P.D.,
17 did you have discussions with anybody else regarding
18 removal of the signs on 7/9?

19 A. No.

20 Q. How did you find out about this deposition today?

21 A. From my attorney.

22 Q. From Mr. Speakman?

23 A. Yes.

24 Q. Have you had an opportunity to review any of the



1 materials that were filed with the District Court of
2 Delaware in regard to this lawsuit?

3 A. Just what is right in front of me is the only
4 thing I've got, I've seen.

5 Q. When you say that --

6 A. And this notice of deposition from Mr. Joe Hill,
7 and this Plaintiffs' Memorandum For the Temporary
8 Restraining Order. Today is the first day I've seen
9 these.

10 Q. First day is today?

11 A. Mm-hmm.

12 Q. And you've had no other discussions since the
13 last time you spoke to Rehoboth P.D. about this with any
14 City official or employee?

15 A. Well, I've spoken to Mr. Speakman about this.

16 Q. Other than Mr. Speakman?

17 A. Other than Mr. Speakman, no. Unless you want to
18 consider my wife.

19 Q. No, we won't consider her. That's privileged.

20 MR. SPEAKMAN: That's privileged.

21 MR. TUCKER: Husband and wife, that's why I
22 said that, out of respect for the privilege.

23 A. Oh, I do want to say I did speak to Mr. Sokolove
24 about this.



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1 Q. When did you speak to him?

2 A. I'm not sure if it was Monday or Tuesday.

3 Q. Can you give us --

4 A. I'm not sure what day it was on, but he did come
5 over and speak to me, very cordial, and we spoke about it
6 and I told him I said, "Look," I said, "If they are in
7 City park, in the island there at Olive and 2nd Street,
8 or between the curb and sidewalk, or on the street side
9 or the pole line," I said, "look," I said, "that is the
10 right-of-way, we will remove them."

11 And I told him, I said, "If they are up on
12 your property, I won't touch them." I won't touch them
13 on anybody's private property.

14 I said I try to be as fair and honest about
15 this and hopefully I try to give the benefit of the doubt
16 as far as location of these signs. But I won't go up on
17 private property and I will not instruct any of my staff
18 to remove anything from private property. If they do, it
19 is not intentional.

20 Sometimes they may. If they have removed a
21 sign, again, it was not intentional. We try to make sure
22 we know where the locations of property lines are. And
23 that's something that we are very critical about.

24 Q. And did you have any discussion with him about



1 utility pole as a benchmark or the sidewalks as a
2 benchmark?

3 A. I've talked to him about that as far as saying,
4 you know, I won't touch anything on utility -- I mean,
5 there are some signs across the street from his
6 restaurant establishment at 59 Lake that were clearly
7 against the pole line or behind it, and I didn't touch
8 them, because I felt that on Lake Avenue the property
9 lines and the pole lines are really, really, really close
10 to each other. So, again, if it was up against a pole or
11 behind a pole, we weren't going to touch them.

12 And there were several that were blatantly
13 beyond the pole line and beyond the curb line because
14 some people have extended their landscaping beyond the
15 edge of the street, and that is clearly in the
16 right-of-way, and a couple of them were removed because
17 of safety.

18 MR. TUCKER: Housekeeping matter for you off
19 the record.

20 (Discussion off the record.)

21 (Recess taken.)

22 BY MR. TUCKER:

23 Q. Back on the record. Mr. Murphy, have you had an
24 opportunity to review the Schedule A of the deposition



1 notice with counsel?

2 A. Yes.

3 Q. And can you provide us answers to certain
4 questions identified in Schedule A this evening?

5 A. Yes.

6 Q. Could you please go through that list and give
7 answers to those questions that you can represent on
8 behalf of the City.

9 A. We have gone through questions 1, 2 and 3.

10 Q. Okay.

11 A. Number 4 is basically, we don't have anything
12 from the State of Delaware --

13 MR. TUCKER: Can I see yours, your
14 deposition notice?

15 MR. SPEAKMAN: That's not my deposition
16 notice.

17 MR. TUCKER: I'm looking for your copy of
18 what Mr. Murphy has.

19 MR. SPEAKMAN: Oh, here.

20 MR. TUCKER: So I can look at it while he is
21 looking at it. Thank you.

22 BY MR. TUCKER:

23 Q. I'm sorry, Mr. Murphy.

24 A. Number 4, I have no knowledge of, if the State of



1 Delaware has given the City any right or authority.

2 Number 5, question (a), who decides whether
3 or not to enforce the federal, state, county or city
4 ordinance, code, the City manager authorizes me to
5 enforce the City Ordinance 74-16.

6 Q. Okay.

7 A. And (b) would be on who decides when to enforce
8 the federal, state, county or city ordinance, code,
9 statute or regulations, without limitation, to 74-16.
10 That would be myself.

11 And question (c) --

12 Q. If I could just pause you there. Is it your
13 testimony that Mr. Ferrese has no authority in that
14 regard?

15 A. He does. I'm sorry. Mr. Ferrese does too, yes,
16 absolutely, as the City manager.

17 Q. All right.

18 A. (C), who decides whether or not a particular
19 sign, post or advertisement violates the federal, state,
20 county or city, ordinance, code, statute or regulations
21 including, without limitation, the City Ordinance 74-16.
22 Do you want me to read the whole --

23 MR. SPEAKMAN: I don't think you need to.

24 Q. You don't need to.



1 A. Okay. In question (c) would be myself, with, I'm
2 sure the City manager has input on that also.

3 (D), how often does the City enforce the
4 City Ordinance 74-16, it would be 365 days a year, would
5 be the answer to that.

6 Q. Okay.

7 A. How often are signs removed as a result of
8 alleged violations, regarding City Ordinance 74-16,
9 again, when signs are found to be possibly in violation,
10 they will be -- they are removed.

11 As far as question (f), I don't know the
12 answer to question (f).

13 Q. Let me ask you this: Are you aware of any
14 policies, procedures, regulations beyond those that you
15 have testified to today?

16 A. No, just what I've testified today.

17 In question (g), as far as what has been --
18 what signs, posters or advertisements that have been
19 removed in the last five years from public right-of-ways,
20 I don't know what happened previously, before I started a
21 year and a half ago. I have no information on that.

22 Q. Can you tell us who would, if you know?

23 A. I don't know. I don't know if there is any.

24 Question (h), same question -- same answer,



1 I don't have any knowledge of what has been erected on
2 public property or right-of-ways, I don't know. There is
3 no record that I found that acknowledges what has been
4 allowed to be installed in the last five years.

5 The removal of campaign signs from public
6 right-of-ways within the City. Since July 1, the
7 question who decided campaign signs should be removed and
8 why, and that is myself, and that is if they are on
9 public property, public right-of-way areas.

10 Question (b) who directed City employees to
11 remove campaign signs, that was myself.

12 Q. What date was that, Mr. Murphy?

13 A. It was --

14 Q. Would you like to refer to --

15 A. Well, that was for the 15th.

16 Q. All right.

17 A. That report is for the 15th. But it was pre July
18 7th. Probably within two weeks of that.

19 Q. Okay.

20 A. What directions or instructions were given to
21 employees, basically that they were to remove them from
22 public right-of-ways, public property, the parks, areas
23 between the sidewalk and the curb, and areas from the
24 pole line out to the street.



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1 And (d), as far as who decides what certain
2 campaign signs should be removed and others left
3 standing, it is myself and my code enforcement officer,
4 Walter Onizuk.

5 And question (e) is why did the City remove
6 certain campaign signs and leave others standing, because
7 there was doubt as far as their location in question, we
8 felt if that's the case then we wouldn't move them. If
9 they were behind the pole line or on private property,
10 they would be left standing. If they were from the pole
11 line to the street edge, then they were removed.

12 Q. Mr. Murphy, did Mr. Ferrese have any input
13 regarding what signs would be left standing and which
14 ones would not?

15 A. Basically, after I advised him what we were
16 doing, he stated that anything in the public
17 right-of-way, between the sidewalk and the curb, would be
18 removed and anything in public property, as far as parks
19 and other areas that were designated as public areas,
20 were still to be removed.

21 Q. Did you have a discussion with him, and you may
22 have already answered this and I apologize if you have,
23 did you have a specific discussion with him about using
24 telephone utility poles as benchmarks and sidewalks as



1 benchmarks?

2 A. Not beforehand.

3 Q. So he was not aware that those were benchmarks
4 that were being used by you or your enforcement officer?

5 A. It was a policy that I started.

6 Q. Was he aware of it, though, was my question?

7 A. Not beforehand, but after this, all these
8 incidents happened on the 9th, he was made aware.

9 Q. Okay. Just very briefly, moving back to your
10 July 15th memo, which is Plaintiffs' 6 --

11 A. Mm-hmm.

12 Q. -- who asked you to create that memo?

13 A. I do a report if I go out and do a -- if I go out
14 and do a violations removal of this nature. It is
15 something that I have been trained to do from my previous
16 employment with the City of Milford. And I do a report
17 like this if there is a possible question. I'm very
18 thorough. I try to be very thorough in my reports, and
19 it is something that I found is a good policy.

20 Q. So your testimony is nobody asked you to do this
21 report, you did it on your own?

22 A. I did it on my own.

23 Q. Does Mr. Onizuk do similar reports when he goes
24 out?



1 A. I wouldn't say he is as precise. If he does do a
2 report, he may just do a statement and put it in the
3 computer. He may give me a copy of something that he
4 did, if he went out on, did a rounds on -- checked some
5 restaurants for violations, when he works evening shifts,
6 he may give me a list of restaurants that he has checked
7 so I know that if a complaint has -- does come in, I can
8 go back and look at his brief report that he, indeed, had
9 been at those sites and had found no violations or had
10 found violations to compare with any complaints.

11 Q. Do you know if Mr. Onizuk prepared any such even
12 minor type of written reports for the signs that were
13 removed on 7/9?

14 A. I think he might have just did one or two. I'm
15 not -- I don't have anything that -- he didn't date
16 anything, so there is probably one or two that he wrote,
17 but they were basically not official, what I would call
18 an official report. They were basically stating that I
19 went around this area and found such and such, and that
20 was it. Or I went around and observed and found nothing.
21 But nothing of this magnitude as far as a report.

22 Q. Mr. Murphy, have you ever done a report like this
23 in the past year for the City of Rehoboth Beach?

24 A. I have done reports like this.



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1 Q. For signs?

2 A. Not for signs.

3 Q. Is this the only time you went on a sign search
4 with Mr. Onizuk?

5 A. This is -- I have been on other sign searches,
6 not for political signs but for other signs.

7 Q. And were reports done, written reports like this
8 that I have here as Plaintiffs' 6?

9 A. Not, not this in-depth. Basically it was just
10 going to a particular site with him, basically because he
11 needed my help in deciding whether a sign was in
12 violation or not, in a commercial store.

13 Q. At the time you did this report, which is dated
14 July 15th, were you aware that a lawsuit was being
15 contemplated against the City regarding its sign code and
16 enforcement thereof?

17 A. I think there may have been mentioned that there
18 was a -- that somebody was talking about possibly doing a
19 lawsuit. But nothing that was official that I knew of.
20 Everybody talks about lawsuits in Rehoboth, but nothing
21 that would make me go out of my way to do a report of any
22 magnitude. It is just something that a lot of times if I
23 feel that it is a subject that is intense, then I will do
24 a report. Very seldom do I get to go out on the road.



1 Q. Who all got this report? Who all did you send it
2 to?

3 A. This report went to Detective Scott O'Bier, Greg
4 Ferrese; City attorney, Mr. Speakman.

5 Q. Okay. Had prior reports been sent to those same
6 people?

7 A. For other --

8 Q. Prior sign reports? I think you had testified
9 you had done one but maybe not in this depth?

10 A. I have sent reports to Mr. Ferrese, but not -- I
11 mean not regarding signs.

12 Q. Okay. Not to Mr. Speakman?

13 A. I've sent -- not regarding signs. I've sent
14 reports to Mr. Speakman and Mr. Ferrese regarding
15 restaurant violations or of that nature.

16 MR. TUCKER: Thank you, Mr. Murphy. I don't
17 have anything else for you, unless Mr. Speakman has some
18 stuff, in which case I might have some follow-up
19 questions.

20 EXAMINATION

21 BY MR. SPEAKMAN:

22 Q. Mr. Murphy, I'm sorry, but this is important to
23 get your testimony in. I have a few questions for you.
24 First off, how many people are in your department, your



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1 Building and Licensing Department?

2 A. I have two secretaries, an assistant building
3 inspector, and a code enforcement officer.

4 Q. That's Walter Onizuk; is that correct?

5 A. Walter Onizuk is the --

6 Q. Onizuk?

7 A. -- Onizuk is the code enforcement officer.

8 Q. Is he full-time?

9 A. He is part-time.

10 Q. His main job, he is assigned the task of removing
11 signs, whether it be political signs or not, that are in
12 the City's public lands or public right-of-way; is that
13 correct?

14 A. That is correct.

15 Q. City-owned land?

16 A. That is correct.

17 Q. And he is part-time?

18 A. He is part-time; he works 24 hours a week.

19 Q. So the fact that a sign may be up, including
20 political signs may be up in violation is not highly
21 significant, is it?

22 A. No.

23 Q. Since he might not be around, he might not have
24 worked that day to review it or no one had reported it to



1 you?

2 A. That's correct. I mean he only works three days,
3 and sometimes we get complaints and he will go out and
4 handle a complaint, whether it be a sign complaint or any
5 other complaint.

6 Q. Can you tell us how far away 59 Lake Avenue is
7 from your office, or your department?

8 A. A block.

9 Q. Rather close, then?

10 A. Rather close. I would say a couple hundred feet.

11 Q. So you would probably more likely see sign
12 violations there, a place that's ten blocks away --

13 MR. TUCKER: Mr. Speakman, I'm just going to
14 note that you are leading the witness. I would ask that
15 you not do that.

16 MR. SPEAKMAN: I don't think that's leading.
17 This is a deposition, I would remind you.

18 MR. TUCKER: I'm just asking you not to ask
19 leading questions. Go ahead.

20 BY MR. SPEAKMAN:

21 Q. You can answer the question. Do you remember the
22 question?

23 A. Yes.

24 Q. Okay.



1 A. The way to get out of the parking lot to my
2 office is either onto Rehoboth Avenue or out the back
3 entrance onto Lake Avenue.

4 Q. Can we have Defense Exhibit 10? Is it buried
5 here?

6 MR. TUCKER: What is that, Walt?

7 BY MR. SPEAKMAN:

8 Q. Defense 10 -- Defense 2, and that's from the
9 Walter Onizuk depo, and I guess all these that have
10 exhibits will be, for the record, they will be from that
11 deposition. We decided to leave them jointly.

12 You mentioned when Mr. Tucker asked you
13 questions that it showed that that survey shows there was
14 a sidewalk. Is that sidewalk in front of the restaurant,
15 59 Lake?

16 A. There is a sidewalk in front of 59 Lake
17 restaurant.

18 Q. Is that sidewalk on City property or on
19 Mr. Sokolove's property?

20 A. There is a section that is on City property, and
21 there is a section that is on Mr. Sokolove's property.

22 Q. Obviously, the street is owned, Lake Avenue, is
23 City property, is it not?

24 A. That is correct.



1 Q. Let's go back to, did Mr. Ferrese instruct you to
2 pick up any political signs this year?

3 A. No.

4 Q. Then why did you pick them up?

5 A. Because that was the policy that was -- the
6 instructions that were given to me at last year's
7 political campaign.

8 Q. So prior to, would it be fair to say prior to
9 July 9th, to the best of your knowledge, Mr. Ferrese had
10 no idea that you were picking up any political signs?

11 A. That's correct.

12 Q. Now, last year did you have -- that was your
13 first election campaign for the City, when you worked as
14 Building Inspector; is that correct?

15 A. Correct.

16 Q. Did you pick up political signs last year in the
17 right-of-way?

18 A. Yes.

19 Q. Do you remember picking up any candidates', any
20 of the candidates you picked up?

21 A. Yes.

22 Q. Can you tell us who the candidates are that you
23 picked -- you remember having their signs picked up?

24 A. Patrick Gossett, a commissioner Rick Sargent.



1 Q. For the record, Patrick Gossett, he was elected a
2 commissioner?

3 A. He was elected commissioner.

4 Q. Were there a lot of political signs last year?

5 A. Yes.

6 Q. Now, the plaintiffs have alleged that in their
7 complaint, that the City adopted a policy to remove
8 plaintiffs' campaign signs from property located within
9 the City. You understand the plaintiffs are Mr. Shields,
10 Mr. Sokolove and Mr. McCarthy?

11 A. Yes.

12 Q. Is that true? Did you develop a policy just to
13 remove their signs?

14 A. No.

15 Q. Had Mr. Ferrese or Mayor Cooper ever even
16 instructed just to pick up their signs?

17 A. No.

18 Q. To the best of your knowledge, have you
19 instructed Mr. Onizuk or has Mr. Onizuk on his own
20 initiative just singled out Mr. Sokolove's signs or the
21 rest of the plaintiffs' signs?

22 A. No.

23 Q. As far as you are concerned, has this 74-16, the
24 prohibition against signs in the public right-of-way, or



1 private signs in the public right-of-way or in public
2 lands, has that been fairly administered and enforced by
3 your department?

4 A. Yes.

5 Q. And against everyone that has a violation?

6 A. That's correct.

7 Q. Do you have any specific policy about whose signs
8 get picked up?

9 A. Only if they are in violation of the, between the
10 sidewalk and the curb or on City property. If they are
11 on the -- from the pole to the edge of the street or edge
12 of the curb we will remove those signs.

13 Q. If there is any question about them, what is the
14 policy, question about the location of the sign?

15 A. Don't touch them. Try to find out the location
16 of the property line. If there is a pole line, try to
17 figure out where the pole line is. If you can't do that,
18 then we don't touch them.

19 Q. Did Mayor Cooper, when you talked to him on July
20 9th, ask you not, or instruct you not to pick up his
21 signs from any location?

22 A. No, he did not.

23 Q. In fact, you told him, you have already
24 testified, that if his signs were in the public



1 right-of-way you would remove his signs as well?

2 A. That is correct.

3 Q. Has Mr. Ferrese, to the best of your knowledge,
4 instructed you or Mr. Onizuk to remove just plaintiffs'
5 campaign signs?

6 A. No, he has not.

7 Q. Were there signs that were left up last year, to
8 the best of your knowledge?

9 A. Yes.

10 Q. Why was that?

11 A. Well, we felt that they were legal placement,
12 where they were on private property, where there was
13 questionable doubt as far as where they were located.

14 Q. Now, would you turn to your report? Do you have
15 a copy of that?

16 A. Yes.

17 Q. I think I'm going to need to share it with you.
18 You don't have it. Would you turn to the back portion
19 and read whose signs have been taken and the number?

20 A. "Political signs removed to date: Mayor Cooper,
21 3; Mr. Sokolove's, 19; Mr. Barbour, 3; Mr. Paterson, 1;
22 Mr. Shields, 2."

23 Q. That's all the candidates for elective office in
24 the City currently; is that correct?



1 A. That is correct.

2 Q. Can you explain why more of Mr. Sokolove's signs
3 have been removed than Mayor Cooper's signs?

4 A. Because they were placed in the right-of-way, and
5 the public parks, and in areas designated as
6 right-of-ways.

7 Q. So according to this report, only returned to
8 Mr. Sokolove were 14 signs. Did he come get the five?

9 A. Yes. Since this report was written he has
10 collected the other five.

11 Q. So all 19 signs that have been removed by your
12 office have been returned to him; is that correct?

13 A. That is correct.

14 Q. I'm going to show you some pictures. This would
15 be, for the record, Defendants' Exhibit 19. Can you
16 identify that photograph?

17 A. This is a Mr. Bob Sokolove for Mayor sign on the
18 corner of Lake Avenue and 3rd Street. This sign is
19 beyond the curb line, was placed in some plantings that
20 are beyond the curb line.

21 Q. I'm going to show you what is Defendants'
22 Exhibit 16. Can you identify that picture?

23 A. This is the same corner of Lake Avenue and 3rd
24 Street. The business is called Bad Hair Day, and there



1 is --

2 Q. Well, let me just say, has the sign that was just
3 shown in the last exhibit, 19, been removed?

4 A. Yes.

5 Q. Or moved back?

6 A. Yes. That was removed.

7 Q. In Exhibit 19, for the record. That's been
8 moved. Are all those signs okay now?

9 A. Yes.

10 Q. All right. Thank you.

11 I want to show you what has been marked as
12 Defense Exhibit 4. Can you identify that location?

13 A. That's Lake Avenue, appears to be adjacent to 59
14 Lake.

15 Q. Is there a political sign there?

16 A. It is Bob Sokolove for Mayor, Dave McCarthy and
17 Bill Shields for Commissioner. It is on private
18 property.

19 Q. That sign is okay now?

20 A. That sign is okay.

21 Q. One moment, please.

22 I'm going to show you what has been marked
23 Defendants' 17. Can you identify that photograph?

24 A. This sign is in front of 1 Norfolk Street. It is



1 between the curb and the sidewalk, Mr. Bob Sokolove for
2 Mayor, and David McCarthy and Bill Shields.

3 Q. Was that a sign -- a photograph that you took?

4 A. Yes.

5 Q. What day did you take it?

6 A. I believe this was on the 15th of July.

7 Q. Was that sign removed?

8 A. That sign was removed because it was up against a
9 fire hydrant.

10 Q. Mr. Murphy, wasn't it also between the sidewalk
11 and the street?

12 A. Yes.

13 Q. And so whether it was up against the fire hydrant
14 or not it would have been removed?

15 A. It would have been removed.

16 Q. Can you identify what has been marked as
17 Defendants' Exhibit 17 -- excuse me -- 18?

18 A. This is Lake Avenue. There appears to be two Bob
19 Sokolove for Mayor political signs in, looks like to be
20 wine barrels, behind the pole line.

21 Q. They are not just wine barrels, are they?

22 A. They are planters of some sort. Wine barrel
23 planters. And they are behind the pole line so we left
24 them.



1 Q. How about Defendants' Exhibit 5, can you identify
2 that photograph?

3 A. This is looking east on Lake Avenue at the front
4 of 59 Lake Avenue, and it shows two Bob Sokolove
5 political signs in the planter areas on his property,
6 which we left.

7 Q. So those signs are okay?

8 A. Correct.

9 Q. Mr. Murphy, Mr. Tucker showed you several
10 photographs from Mr. Hill's deposition too. Would it be
11 fair to say that without going to the actual location,
12 sometimes it is difficult just from a photograph to tell
13 whether it meets your policy, whether it is in violation
14 of your policy how you would determine a political sign
15 was in violation or not?

16 A. It is very difficult from a photo.

17 Q. Unless, of course, you see a sidewalk or a --

18 A. If I see a sidewalk or a pole line of such, then
19 I could make a determination. But normally from photos I
20 don't try to make a determination.

21 Q. Mr. Murphy, in the photographs in Defendants' 2,
22 the government, many of those signs were directional and
23 what we call locality signs, marking where a location
24 was, what was there; is that correct?



1 A. Mm-hmm, that's correct.

2 Q. Did you see yourself any of the signs that
3 Mr. Onizuk removed before he removed them?

4 A. Yes.

5 Q. Can you tell us from memory what signs?

6 A. The ones in Gerar Park and the ones in the island
7 at Lake and Olive and 2nd.

8 Q. Is that across from the Breakwater Hotel?

9 A. It is across from The Breakers.

10 Q. Breakers, excuse me.

11 Were there several political signs on Lake
12 Avenue, Park Avenue, Pennsylvania Avenue, Henlopen Avenue
13 and Columbia Avenue, and Oak Avenue that were considered
14 to be partially infringing on the City's property;
15 however, you made a decision not to remove them?

16 A. That's correct.

17 Q. Why was that?

18 A. Well, they were either against the pole line or
19 behind the pole line, or in a grassy area next to the
20 fenceline, and we left them.

21 Q. If it is questionable, what is your policy as to
22 the location of the sign?

23 A. If it is questionable, don't take it.

24 Q. And these were signs of all the candidates that



1 were left?

2 A. That's correct.

3 Q. Including the plaintiffs?

4 A. That's correct.

5 Q. Again, to clarify, Mr. Ferrese didn't direct you
6 to take political signs this campaign season?

7 A. No, he did not.

8 Q. You are the one who instructed Mr. Onizuk to do
9 so?

10 A. That's correct.

11 Q. It is correct that you did so based on last
12 year's policy?

13 A. That's correct.

14 Q. One moment, please.

15 (Discussion off the record.)

16 MR. SPEAKMAN: I have no further questions.

17 EXAMINATION

18 BY MR. TUCKER:

19 Q. Mr. Murphy, I'll try to be short.

20 A. Please, I got to be at 7:00 o'clock.

21 Q. I know.

22 A. I'm first to give my report.

23 Q. I don't usually anticipate --

24 A. They get very mad at me if I'm late, they really



1 do.

2 Q. When I gave you my time, I didn't think you were
3 going to get direct from your own counsel. I apologize.

4 Mr. Speakman asked you about the fact that
5 some of these private signs were directional signs that I
6 showed you, at least that's the way he characterized
7 them. Is there an exception in the City code you are
8 aware of for private directional signs?

9 A. Not that I know of.

10 Q. Now, you did this list that's attached to --

11 A. As far as location? I mean for directional signs
12 in commercial district, they are allowed, private
13 property.

14 Q. On a right-of-way?

15 A. Not in a right-of-way.

16 Q. For example, the Art League signs?

17 A. No.

18 Q. For example, the trailer park sign?

19 A. No.

20 Q. Regarding the Plaintiffs' 6, which is your memo
21 dated 7/16/05, Mr. Speakman was asking you about the last
22 page and the breakdown on the candidates and how many
23 signs were recovered by the City for each candidate.

24 With the exception of Mr. Sokolove, can you tell us which



1 candidates on that list had signs removed on or before
2 7/9?

3 A. 7/9.

4 Q. On or before that date?

5 A. Mr. Cooper and Mr. Shields.

6 Q. How many signs did Mr. Cooper have removed before
7 7/9?

8 A. Two.

9 Q. Do you remember what those dates were? I think I
10 asked you earlier, but you weren't sure?

11 A. I'm not sure what dates those were. I really am
12 not.

13 Q. How about, what was the second one?

14 A. Mr. Shields.

15 Q. Mr. Shields, were both of his removed before that
16 date or after that date, or on that date?

17 A. One was on the 15th and one was before that date.

18 Q. Before the 9th?

19 A. Yes. However, I believe Mr. Shields' signs were
20 not placed there by himself. I believe those were signs
21 that were basically pitched off the side of the road.

22 Q. Okay. So they did not appear to be installed,
23 they just seemed to be left?

24 A. Yes.



1 Q. How about Mr. Cooper's, Mayor Cooper's?

2 A. Installed.

3 Q. Now, Mr. Speakman also asked you about fair
4 enforcement. And he asked you about things that could
5 account for why Mr. Sokolove has so many signs taken down
6 and others did not, correct? Is it fair, would it be
7 fair for me to say that folks who are running for office
8 who know about your sidewalk policy and your utility pole
9 policy have a much better idea of where signs will or
10 will not be picked up by City officials than those who
11 don't know those policies?

12 A. I hope so.

13 Q. Okay.

14 A. I mean, I have been very vocal and I've talked
15 to, explain to Mr. Sokolove where I will and will not
16 pick up signs. And Mr. Cooper, and Mr. Paterson. I have
17 not spoken to Mr. Barbour or Mr. Shields. But they know
18 my policy.

19 Q. Your discussion with Mr. Sokolove, however, did
20 not occur until was it 7/9 or thereafter?

21 A. Thereafter, right.

22 Q. Were you aware of any discussions that
23 representatives of Mr. Sokolove or other candidates had
24 through an attorney directly with Mr. Ferrese about what



1 the City's sign policy was?

2 A. No.

3 Q. Now, again in terms of fairness, in terms of
4 let's say free speech, would you agree that there are
5 certain folks who have private signs up in the
6 right-of-way, directional or otherwise, that are still
7 there today; for example, Art League?

8 A. Yes, yes, I would say that.

9 Q. Does that strike you as fair?

10 MR. SPEAKMAN: I'm going to -- I instruct
11 you not to answer that question.

12 MR. TUCKER: I want an answer.

13 MR. SPEAKMAN: That's not a relevant issue
14 here today.

15 MR. TUCKER: Mr. Speakman, you asked this
16 witness about fairness.

17 MR. SPEAKMAN: I asked him about enforcement
18 of it.

19 MR. TUCKER: Okay. So am I.

20 MR. SPEAKMAN: I don't think he has --
21 that's not -- I don't think he should answer that. I
22 think I'm instructing him not to.

23 MR. TUCKER: Well, it is not privileged.
24 You asked him about fairness.



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MR. SPEAKMAN: It is not relevant.

MR. TUCKER: Are we really going to try to get a judge on the phone at 6:30?

MR. SPEAKMAN: If you want to try to get a judge, go ahead.

MR. TUCKER: Is that what you thought, I wouldn't be able to get a judge at 6:30? Well, I don't have his home number, Mr. Speakman. But you certainly opened the door to that question. This witness, in all fairness, should answer that. It is clear to me there is a lack of fairness when it comes to some of these issues.

Mr. Murphy, I'm not going to put you through any more. I'm trying to follow up with you on questions Mr. Speakman asked you almost exactly. But I'm done.

THE WITNESS: Thanks.

(Proceedings conclude at 6:31 p.m.)

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- - - - -



DEPOSITION OF: David F. Murphy

DATE TAKEN: July 25, 2005

IN THE MATTER OF: Sokolove v City of Rehoboth Beach, De

Pursuant to Rule 30(E), this transcript was made available to the witness for examination.

The witness has failed to sign this deposition transcript within the designated 30-day period set forth in rule 30(E).

Therefore, this original transcript is being forwarded as transcribed.

DATED: 9/09/05

Barbara Reichert

Barbara Reichert
Production Manager

1 State of Delaware)

)

2 New Castle County)

3

4

CERTIFICATE OF REPORTER

5

6 I, Eleanor J. Schwandt, Registered
7 Professional Reporter and Notary Public, do hereby
8 certify that there came before me on the 25th day of
9 July, 2005, the deponent herein, DAVID F. MURPHY, who was
10 duly sworn by me and thereafter examined by counsel for
11 the respective parties; that the questions asked of said
12 deponent and the answers given were taken down by me in
13 Stenotype notes and thereafter transcribed by use of
14 computer-aided transcription and computer printer under
15 my direction.

16 I further certify that the foregoing is a
17 true and correct transcript of the testimony given at
18 said examination of said witness.

19 I further certify that I am not counsel,
20 attorney, or relative of either party, or otherwise
21 interested in the event of this suit.

22

23

24

Eleanor J. Schwandt

25

Certification No. 125-RPR

26

(Expires January 31, 2008)

27

DATED:

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